IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3907 OF 2004

Vishwas Namdeo Devare & Ors... ... Petitioners.

Versus

Pandharinath Mohan Devare & Ors.... Respondents.

Mr. C. G. Gavnekar for the Petitioners.

Mr. S. S. Pakale for Respondent Nos.2,6 & 9.

CORAM : S. A. BOBDE, J.

DATED : 25TH APRIL, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for respondent Nos.2, 6 and 9 waives service of Rule. By consent, Rule made returnable and heard forthwith.

3. The petitioners have challenged the order dated 31st July, 2003 passed by the Additional District Judge, Malegaon, below Exh.1.

4. By the impugned order, the learned Additional

District Judge has observed that only one Narayan Govind Deore is the sole trustee and has directed him to take necessary steps for getting more trustees appointed. Petitioner No.1, who was one of the original trustee, has along with two others claiming to have interest in the trust, have challenged this order.

5. Mr. Gavnekar, learned Counsel appearing for the Petitioners, submits and in my view rightly, that the impugned order is not sustainable. The order of the learned Additional District Judge holds Narayan Govind Deore to be the sole trustee and empowers him to take legal steps for appointment of more trustees is contrary to the earlier order in regard to this very public trust. On 7th November, 1996 the Assistant Charity Commissioner formulated a scheme under the Bombay Public Trusts Act for administration of the trust and appointed the following persons as the original trustees:

(1) Shri Narayan Govind Deore,
(2) Shri Pundalik Dada Deore,
(3) Shri Vishwas Namdeo Deore,
(4) Shri Karbhari Giri Deore,

(5) Shri Shivaji Namdeo Deore,

(6) Shri Govind Dhavalu Ahire,

(7) Shri Kedu Eknath Hire.

These were as the first board of trustees. According to the scheme, which has not been challenged or set aside, the next board of trustees were to be elected vide clause 9 of the scheme, which reads as follows:

"9. Election of Trustees :

a) Board of Trustees shall be elected after every five (5) years in the Special General Body Meeting to be convened by the retiring trustees one month before the expiration of their period."

6. Having regard to the above, there was no justification for the learned Additional District Judge to declare Narayan Govind Deore as the sole trustee and empower him alone to take steps for appointment of more trustees.

7. According to Mr. Gavnekar, learned Counsel for the Petitioners, from the first board of trustees

Narayan, Vishwas, Karbhari, Shivaji and Kedu are existing trustees. According to Mr. Pakale, learned Counsel for the Respondents, some of them, viz., Vishwas, Karbhari and Shivaji have been removed under the orders of this Court. It is sufficient to note that Narayan Govind Deore was not the Sole Trustee. The impugned order also does not observe that the other trustees have been removed. It holds that they are 'no more'. In view of the order that I propose to pass, it is not necessary to go into that dispute.

8. Mr.Pakale, learned Counsel for the Respondents, submitted that election has been held in pursuance of the order of the learned Additional District Judge and a change report in that regard has been made under the provisions of the Bombay Public Trusts Act. In the view I have taken, the elections which have admittedly been held by Respondent No.1 alone i.e. without associating the other existing trustees, and in any case without associating the Petitioners has a necessary legal consequences. The elections are prima facie not in accordance with the Scheme framed by the learned Asstt. Charity Commissioner.

9. Having regard to the Scheme framed by the

Assistant Charity Commissioner on 7th November, 1996, I hereby direct the existing and functioning Trustees from amongst the first board of trustees, referred to above, to hold election within a period of two months from today. The election shall be supervised by Respondent No.12, the Assistant Charity Commissioner, Nashik, who shall ensure that they are held in accordance with the Scheme. In the meanwhile, the respondent No.1 shall not take any major financial decision or action for removal or induction of employee except for disciplinary reasons.

10. Rule made absolute in the above terms. Writ Petition is, accordingly, disposed of. No order as to costs.

Sd/-

(S. A. BOBDE, J.)